FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 642/2005
(Dajiba Farida Ambulkar **VERSUS** Dinesh @ Dhondaji Marotrao Dhendage **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr.Joharapurkar, Advocate for the appellant.
Mr.Deshpande, Advocate for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 30th August, 2007.

Heard the learned counsel for the parties.

The appellant is the original defendant. A suit was filed by the plaintiff against the defendant for possession of the suit property which was encroached upon by the defendant to the extent of 2.80 Sq.Mtrs. According to the plaintiff, the plaintiff was the owner of City Survey No.658 and the defendant was the owner of adjoining City Survey No.659. The city survey officer carried out measurements by giving notice to the plaintiff, the defendant and other adjoining owners, and after carrying out the measurements, found that the defendant had encroached upon 2.80 sq.mtrs of land belonging to the plaintiff.

The defendant denied the claim of the plaintiff and pleaded that the defendant was in fact in possession of the property owned by the defendant. It was further pleaded that the plaintiff had not purchased the property on 30.11.1995 but had

purchased the same in the year 1965. The defendant sought for the dismissal of the suit filed by the plaintiff.

The trial Court framed the necessary issues and held that the plaintiff had proved that the defendant had encroached over plot admeasuring 2.80 sq.mtrs., belonging to the plaintiff. The trial Court consequently decreed the suit of the plaintiff and directed the defendant to handover the possession of the encroached portion to the plaintiff.

The defendant challenged the judgment of the trial Court in appeal. The first appellate Court, by the judgment dated 01.09.2005, confirmed the findings recorded by the trial Court and held that the defendant had encroached upon the land belonging to the plaintiff. While recording the aforesaid findings, the trial as well as the appellate Court considered the evidence tendered by the parties on record and appreciated the evidence in the right perspective. The appellate Court further considered the fact that the city survey officer was examined on behalf of the plaintiff and he had clearly deposed that the land bearing City Survey No.658 and City Survey No.659 was measured by the city survey officer in the presence of both the parties. It was found by the Courts that the said measurement was carried out in the presence of witnesses Gopal, Gotiram, P.A. Wasnik and Madhukar Chapke. The Courts also

considered the fact that it was not the case of the defendant that he was the owner of City Survey No. 658.

The findings recorded by both the Courts are pure findings of fact based on a proper appreciation of evidence on record. They do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE